IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 4102 of 2001

to

FIRST APPEALNo 4137 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL
and
Hon'ble MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SPECIAL LAND ACQUISITION OFFICER

Versus

KARSHANBHAI GANESHBHAI BHANGI

Appearance:

1. First Appeal No. 4102 of 2001

GOVERNMENT PLEADER for Petitioners No. 1-2

MS SEJAL K MANDAVIA for Petitioner No. 2

..... for Respondent No. 1

CORAM : MR.JUSTICE B.C.PATEL
and
MR.JUSTICE SHARAD D.DAVE

Date of decision: 29/10/2001

C.A.V. JUDGEMENT

(Per : MR.JUSTICE SHARAD D.DAVE)

These appeals are preferred under Sec. 54 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act) read with Sec. 96 of the Civil Procedure Code, 1908 against the award made by the Reference Court i.e. Extra Assistant Judge, Mehsana in L.A.R.Case nos. 2266/96 to 2283/96 and 2657/96 to 2674/96 on 14.11.00.

The lands situated at village Khakhadi, Taluka : Sami, District : Mehsana were acquired for which notification under Sec. 4 of the Act was published on 27.2.92. After following the procedure, the Special Land Acquisition Officer awarded Rs.2.10ps. per sq.mtr. for irrigated lands and Rs.1.40ps. per sq.mtr. for non-irrigated lands. Being dissatisfied with this offer, the claimants submitted applications under Sec. 18 of the Act. Therefore, the Reference Court was required to determine the market price.

On behalf of the claimants, Muljibhai Bhagavanbhai Rabari was examined vide exh. 9 who stated that their lands are irrigated and non-irrigated. They were taking three crops in a year including commercial crops like rice, castor seeds, muster seeds and cotton seeds etc. They are getting Rs.30,000/- per year. 7/12 form is produced at exh. 12. It is further contended that their lands are situated in a developed area and that their lands are capable to be put for non-agricultural uses also. About the facilities, it is stated that there are educational institutions, bus facility, water and electric facility etc. in the village where the acquired lands are situated. There are commercial and industrial units near about the lands acquired. The Reference Court, in absence of any evidence led by the opposite side, believed the claimants' witness and arrived at the conclusion that the claimants are entitled to get Rs.13/- net per sq.mtr. i.e. Rs.10.90ps. per sq.mtr. for irrigated lands and Rs.11.60ps. per sq.mtr. for non-irrigated lands in addition to the compensation already awarded by the Land Acquisition officer. It is against this award, the present appeals are preferred by the State Government.

We are not required to consider further aspects as the Division Bench of this Court has, in First Appeal Nos. 2088 of 2001 to 2105 of 2001 decided on 1.5.01, for the lands acquired at village Sarval, Taluka : Harij, Dist : Mehsana thought it fit not to interfere with the award of the Reference Court fixing the price at Rs.15/per sq.mtr. in all for irrigated lands and Rs.10/per sq.mtr. in all for non-irrigated lands.

Mr.Sheth for the claimants stated that village Sarval and Khakhdi are adjacent to each other. A map to that effect is produced before us. It is also pointed out that the Division Bench of this Court, for the lands situated at village Sarval, fixed the price at Rs.15/per sq.mtr. and Rs.10/- per sq.mtr. for irrigated and non-irrigated lands respectively. The date of notification in the above referred appeals and in the present appeals is the same. He has fairly stated that considering the distance between Taluka Harij and village Sarval and Taluka Harij and village Khakhdi, the price awarded for irrigated lands by the Reference Court i.e. Rs.13/- in all is fair. But for the Reference Court for non-irrigated lands also has fixed at Rs.13/- which should be reduced to Rs.10/- in view of the judgment of the Division Bench of this Court.

When a comparable evidence is produced before us and the map also shows that the village Sarval is adjacent to village Khakhdi, in absence of any evidence produced by the State, we find no reason to interfere to with the award of the Reference Court as far as irrigated lands are concerned. So far as non-irrigated lands are concerned, the Reference Court has fixed the same price for both the types of lands. Therefore, the price for non-irrigated lands is to be reduced to Rs.10/- from Rs.13/- as fixed by the Reference Court. The appeals, are allowed to the aforesaid extent.

Mr.K.M.Sheth appearing for the claimant submitted that the State is also required to pay interest on solatium in view of the judgment of the Apex Court in case of SUNDER vs. UNION OF INDIA (2001 SOL Case No. 551), the claimants are also entitled to interest on solatium. The Apex Court in the said judgment pointed out as under:

"We think it useful to quote the reasoning advanced by Chief Justice S.S.Sandhawalia of the Division Bench of the Punjab and Haryana High Court in State of Haryana Vs. Smt. Kailashwati & Ors. (supra)

`Once it is held as it inevitably must be that the solatium provided for under Section 23(2) of the Act forms an integral and statutory part of the compensation awarded to a landowner, then from the plain terms of Section 28 of the Act, it would be evident that the interest is payable on the compensation awarded and not merely on the market value of the land. Indeed the language of S.28 does not even remotely refer to market value alone and in terms talks of compensation or the sum equivalent thereto. The interest awardable under Section 28 therefore would include within its ambit both the market value and the statutory solatium. It would be thus evident that the provisions of Section 28 in terms warrant and authorise the grant of interest on solatium as well.'

In our view the aforesaid statement of law is in accord with the sound principle of interpretation. Hence, the persons entitled to the compensation awarded is also entitled to get interest on the aggregate amount including solatium. The reference is answered accordingly."

Mr.K.M.Sheth appearing for the claimant also requested that the State Government may be directed to pay the amount at the earliest. The State Government is directed to pay the 50% of the amount awarded within 3 months after proper verification and the remaining 50% amount within 3 months thereafter in the similar way.

The appeals are allowed to the aforesaid extent. No order as to cost.

(B.C.PATEL, J)

(SHARAD D DAVE, J)

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